

REMARKS

Claims 1 to 8 are pending in this application. All claims were previously entered.

Claims 1-3 and 6-8 are rejected under §102(b) as being anticipated by US 5,002,576 (hereinafter Fuhrman). The Examiner asserts that Fuhrman teaches (1) a spacer with expanding spikes and (2) a quantity of a precursor of a bio-compatible elastic material as instantly claimed. The Applicants traverse, asserting that Fuhrman does not explicitly or inherently teach expanding spikes.

In formulating the §102(b) rejection based upon Fuhrman, the Examiner equates the corrugations of Fuhrman with the expanding spikes of the instantly claimed spacer. However, Fuhrman's corrugations are not a prima facie anticipation of the claimed expanding spikes because they do not expand.

Referring to the passage of Fuhrman cited by the Examiner, Fuhrman states:

(Col. 2; lines 63-66) "...the spring body forms a stable buffer element which can be compressed and deformed without its axial cross section changing substantially since it is enclosed by the flexible corrugated tube ...".

Fuhrman explicitly states that the axial cross section of the corrugated tube does not change. Since the Examiner has equated Fuhrman's corrugations with the instantly claimed spikes, the Examiner has cited a passage in which Fuhrman specifically teaches spikes which are static. Fuhrman does not anticipate what is claimed because he does not explicitly or inherently disclose the claimed expanding spikes.

Alternatively or additionally, Fuhrman teaches corrugations as opposed to the instantly claimed spikes. Dictionary.com defines a corrugation as:

"A groove or ridge on a corrugated surface";

and defines a spike as :

"a long sharp-pointed implement (wood or metal) "

Or " any holding device consisting of a long sharp-pointed object".

The Applicants respectfully assert that the corrugations of Fuhrman are not long and/or not sharp and/or not pointed. Alternatively or additionally, the Applicants respectfully assert that the corrugations of Fuhrman do not constitute a holding device.

Alternatively, or additionally, the corrugations of Fuhrman are on a corrugated tube, so that each corrugation is a ring. A ring and a spike are not equivalent elements.

The Examiners reading of the claimed spikes on Fuhrman's corrugations in order to formulate a §102(b) rejection is improper because corrugations do not anticipate spikes. Therefore, Fuhrman's corrugations are not a prima facie anticipation of the claimed expanding spikes because they are not spikes.

In summary, the §102(b) rejection based upon Fuhrman's corrugations is traversed because these corrugations are neither expanding nor spikes.

Claims 1-3 and 6-8 are rejected under §102(b) as being anticipated by US 4,932,975 (hereinafter Main). The Examiner asserts that Main teaches (1) a spacer with expanding spikes and (2) a quantity of a precursor of a bio-compatible elastic material as instantly claimed. The Applicants traverse, asserting that Main does not explicitly or inherently teach expanding spikes as instantly claimed. In formulating the §102(b) rejection based upon Main, the Examiner equates the expanding bellows of Main with the instantly claimed expanding spikes. However, Main's expanding bellows are not a prima facie demonstration of the claimed expanding spikes.

Main's figure 3 (relative to figure 2) illustrates that the axial cross section of the expandable bellows decreases as injection of fluid occurs. These figures show corrugations on Main's expandable bellows, not spikes as instantly claimed. The Applicants respectfully assert the difference between corrugations and spikes as set forth hereinabove. The §102(b) rejection based upon Main is traversed because corrugations do not anticipate spikes.

In summary, all of the Examiner's rejections of claim 1 under §102(b) are traversed because neither Fuhrman nor Main explicitly or inherently disclose the instantly claimed expanding spikes. All claims depending from claim 1 are therefore

in condition for allowance at least by virtue of their dependence from an allowable claim.

In addition, Claim 3 specifies that the expanding spikes expand when the spacer is axially collapsed. Referring to the passage of Main cited by the Examiner, Main states:

(Col. 3; lines 61-64) "...expandable bellows 22 *formed of any suitable material having sufficient flexibility to permit expansion of the bellows into the condition shown in FIG. 3* ...". [*emphasis added*]

Main's figure 3 (relative to figure 2) illustrates that the cross section of the expandable bellows decreases as injection of fluid causes axial expansion. Thus, even if the corrugations on Main's expandable bellows were spikes [which they are not], Main would still not anticipate claim 3 because he teaches contraction of the corrugations during axial expansion of the spacer.

Claims 4 and 5 are rejected under §103(a) as being obvious over Main in view of US 4,932,975 (hereinafter Brett). The Applicants traverse employing three independent lines of argument.

First, claims 4 and 5 are in condition for allowance by virtue of their dependence from claim 1 as stated above.

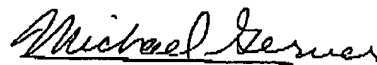
Second, the Examiner has provided no prima facie support for combining Main and Brett because no sustainable explanation of the motivation to make such a combination is provided. On the contrary, one of ordinary skill in the art would find no motivation to combine Main and Brett. The requisite motivation is absent because Main teaches (Col 3; lines 66-67) "...*injection of fluid into the bellows to cause axial expansion of the prosthesis...*". Clearly, one of ordinary skill reading Main would not contemplate introducing holes into the bellows because holes would permit the injected fluid to escape from the bellows. This escape would reduce or prevent the axial expansion sought by Main. Because the operative principle of Main precludes or discourages the use of holes, one of ordinary skill in the art would find no motivation in Main to seek holes as taught by Brett.

Third, the Examiner has provided no prima facie argument for a §103(a) rejection based upon Main in view of Brett because such a combination would not produce what is claimed. Even if one of ordinary skill in the art were to introduce holes as taught by Brett into the invention of Main, the result would merely be to diminish the efficiency of Main's bellows. Introduction of holes into the bellows of Main would not cause those bellows to include expanding spikes as instantly claimed.

In summary, combination of Main and Brett to formulate a §103(a) rejection is inappropriate because the Main reference provides no motivation for one of ordinary skill in the art to combine the two references and/or because such a combination would not produce what is claimed.

In view of the above remarks, applicants submit that the claims are patentable over the cited art and the specification fulfills all legal requirements. Allowance of the application is respectfully awaited. If, however, the Examiner is not convinced and the Examiner is of the opinion that a telephone conversation may forward the present application toward allowance, applicants respectfully request that the Examiner call the undersigned at 1 (877) 428-5468. Please note that this is a direct *toll free* number in the US that is answered in the undersigned's Israel office. Israel is 7 hours ahead of Washington.

Respectfully submitted,
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